IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WA.No. 2709 of 2007

AGAINST THE JUDGEMEN IN WPC.30164/2007 Dated 11/10/2007
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APPELLANT/PETITIONER:

HOTEL DOUBLOON,
KALLAMBALAM,
REP. BY MANAGING PARTNER,
R.MANILAL.

BY ADV. SRI.R.ANILKUMAR

RESPONDENTS/RESPONDENTS:
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1. ASSISTANT COMMISSIONER,
SPECIAL CIRCLE,
THIRUVANANTHAPURAM.

2. DEPUTY COMMISSIONER (APPEALS),
THIRUVANANTHAPURAM.

3. STATE OF KERALA,
REP. BY SECRETARY,
TAX DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER SRI. VINOD CHANDRAN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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WRIT APPEAL No. 2709 of 2007

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Dated this the 15th day of November, 2007.

JUDGMENT

H.L.DATTU, CJ,

Discretionary order passed by the First Appellate Authority was the subject matter of a writ petition at the instance of the assessee. The learned Single Judge has modified that interim order passed by the First Appellate Authority, once again exercising his extraordinary and discretionary jurisdiction. Aggrieved by the said order, the assessee/petitioner in the writ petition is before us in this writ appeal.

2. Normally, in fiscal matters, this court is not expected to grant interim orders, for the reason that the State Government cannot run on bank guarantees/immovable property securities etc.. This issue is well settled by the Supreme Court in the case of Empire Industries Limited and others v. Union of India and others ((1987) 64 STC 42). But, in exceptional cases, this Court can exercise its extra ordinary jurisdiction and pass such order, keeping in view the interest of the revenue and that of the assessee. That is what that is done by the learned Single Judge in the instant case. The Appellant should be satisfied with that order. A harmless and beneficial order cannot be subject matter of an appeal. Therefore, in our view, the appeal requires to be rejected and accordingly, it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb/DK.